

**191—48.11(508E) Fraud prevention and control.**

**48.11(1) Definition.** “Fraudulent viatical settlement act” includes:

*a.* Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, conspires in the commission of, conspires to commit, or permits its employees or its agents to engage in acts including but not limited to:

(1) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:

1. An application for the issuance of a viatical settlement contract or insurance policy;
2. The underwriting of a viatical settlement contract or insurance policy;
3. A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;
4. Premiums paid on an insurance policy;
5. Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;
6. The reinstatement or conversion of an insurance policy;
7. The solicitation, offer, effectuation or sale of a viatical settlement contract or insurance policy;
8. The issuance of written evidence of a viatical settlement contract or insurance policy; or
9. A financing transaction.

(2) Employing any device, scheme, or artifice to defraud related to viaticated policies.

*b.* Instances in which, in the furtherance of a fraud or to prevent the detection of a fraud, any person commits or permits its employees or its agents to:

(1) Remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a viatical settlement provider or viatical settlement broker or other person engaged in the business of viatical settlement contracts;

(2) Misrepresent or conceal the financial condition of a viatical settlement provider or viatical settlement broker, insurer or other person;

(3) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of viatical settlement contracts; or

(4) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the commissioner.

*c.* Embezzlement, theft, misappropriation or conversion of moneys, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner or any other person engaged in the business of viatical settlement contracts or insurance.

*d.* Recklessly entering into, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator’s agent intended to defraud the policy’s issuer. “Recklessly” means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.

*e.* Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subrule.

**48.11(2) Fraudulent viatical settlement acts, interference and participation of convicted felons prohibited.**

*a.* A person shall not commit a fraudulent viatical settlement act.

*b.* A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this rule or investigations of suspected or actual violations of this rule.

*c.* A person in the business of viatical settlement contracts shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the

business of viatical settlement contracts, unless the person's resident state has granted the person consent to work in the business of insurance, pursuant to 18 U.S.C. Section 1033(e)(2).

**48.11(3)** *Fraud warning required.*

*a.* Viatical settlement contracts and applications for viatical settlement contracts, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

“Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.”

*b.* The lack of a statement as required in paragraph “*a*” of this subrule does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

**48.11(4)** *Mandatory reporting of fraudulent viatical settlement acts.*

*a.* Any person engaged in the business of viatical settlement contracts having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

*b.* Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.